

NO.: FST-CV-21-6050152-S : SUPERIOR COURT
CONRADO GONZALEZ and :
ROBERT ZEUG : J.D. OF STAMFORD
v. : AT STAMFORD
CITY OF STAMFORD and
SYNAGRO-CONNECTICUT, LLC : APRIL 22, 2021

MOTION TO STRIKE AND FOR JUDGMENT

Pursuant to Connecticut Practice Book § 10-39, *et seq.*, the Defendant City of Stamford, hereby moves to strike Count Eight of the Plaintiffs' Complaint, dated January 19, 2021. As more fully set forth in the attached memorandum of law, Connecticut provides an exclusive remedy through the Workers' Compensation Act for when an employee is injured in injured in the course of employment. Accordingly, the exclusivity provision bars a private cause of action to be brought by the employee against the employer. Therefore, the claim against the City of Stamford in Count Eight of the Plaintiffs' Complaint must be stricken and can never be perfected as the Workers' Compensation Act exclusivity provision bars private action and Plaintiff Conrado Gonzalez failed to plead that the exception to the exclusivity provision should apply. Accordingly, judgment on Gonzalez' negligence claim against the City of Stamford should enter for the City of Stamford.

For the foregoing reasons, as well as those set forth in the accompanying Memorandum of Law, which is incorporated herein by reference, Count Eight in the

Complaint against the City of Stamford must be stricken and judgment should enter for the City of Stamford.

. WHEREFORE, the City of Stamford requests the Court to strike Gonzalez' claim against it and enter judgment in its favor.

DEFENDANT,
CITY OF STAMFORD

By /s/ *Eric E. Gerarde*
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CERTIFICATION

This is to certify that a copy of the foregoing Motion to Strike and for Judgment was or will immediately be delivered via regular mail, postage prepaid, or delivered electronically or non-electronically on this 22nd day of April, 2021, to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties receiving electronic delivery.

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO STRIKE AND FOR
JUDGMENT**

Pursuant to Connecticut Practice Book § 10-39, the Defendant City of Stamford moves to strike Count Eight of Plaintiffs' Complaint for failure to state a claim upon which relief can be granted by because the exclusive remedy for Conrado Gonzalez' injuries is found in the Workers' Compensation Act, Connecticut General Statute § 31-284.

I. BACKGROUND

The plaintiffs, Conrado Gonzalez and Robert Zeug were involved in an explosion at the Stamford Water Pollution Control Authority's (SWPCA) Thermal Drying Facility on August 1, 2019, giving rise to the Complaint the plaintiffs on January 26, 2021. At the time of the explosion, Gonzalez was an employee for the City of Stamford working at the Water Pollution Control Facility. (See Complaint Paragraph 5). On August 1, 2019, there was a mechanical issue with one of the fans at the thermal drying facility, and was being worked on by a private electrical contractor. Gonzalez was sent to check on the status of the repairs, and was walking back to the area of the

building that is controlled by the SWPCA when the explosion occurred. As a result of the explosion, Gonzalez suffered various soft-tissue, cerebral, nasal, and shoulder injuries.

II. LEGAL STANDARD

Connecticut Practice Book Section 10-39 states, in pertinent part, that “A motion to strike shall be used whenever any party wishes to contest: (1) the legal sufficiency of the allegations of any complaint, counterclaim or cross claim, or of any one or more counts thereof, to state a claim upon which relief can be granted; or ... (3) the legal sufficiency of any such complaint, counterclaim or cross complaint, or any count thereof, because of the absence of any necessary party or, pursuant to Section 17-56(b), the failure to join or give notice to any interested person ...”

“The purpose of a motion to strike is to contest ... the legal sufficiency of the allegations of any complaint ... to state a claim upon which relief can be granted.” McCauliff v. Sharif, 52 Conn. Supp. 579, 581 (Super. Ct. 2013). Connecticut Practice Book § 10-39 provides that “[w]hensoever any party wishes to contest (1) the legal sufficiency of the allegations of any complaint, counterclaim or cross claim, or of any one or more counts thereof, to state a claim upon which relief can be granted ... that party may do so by filing a motion to strike the contested pleading or part thereof.” “[I]t is fundamental that in determining the sufficiency of a complaint challenged by a defendant's motion to strike, all well-pleaded facts and those facts necessarily implied from the allegations are taken as admitted.” McCauliff, 52 Conn. Supp. at 581. “On a

motion to strike, the trial court's inquiry is to ascertain whether the allegations in each count, if proven, would state a claim on which relief could be granted.” Bennett v. Connecticut Hospice, Inc., 56 Conn. App. 134, 136, 741 A.2d 349, 351 (1999). “[The court] construe[s] the complaint in the manner most favorable to sustaining its legal sufficiency ... Thus, [i]f facts provable in the complaint would support a cause of action, the motion to strike must be denied ... Moreover, [the court notes] that [w]hat is necessarily implied [in an allegation] need not be expressly alleged ... It is fundamental that in determining the sufficiency of a complaint challenged by a defendant's motion to strike, all well-pleaded facts and those facts necessarily implied from the allegations are taken as admitted ... Indeed, pleadings must be construed broadly and realistically, rather than narrowly and technically.” Coppola Const. Co. v. Hoffman Enterprises Ltd. P'ship, 309 Conn. 342, 350, 71 A.3d 480, 486 (2013). “If any facts provable under the express and implied allegations in the plaintiff's complaint support a cause of action ... the complaint is not vulnerable to a motion to strike.” Jordan v. Second Stone Ridge Coop. Corp., No. FBTCV166061176S, 2017 WL 1194261, at *1 (Conn. Super. Ct. Feb. 21, 2017). However, “[a] motion to strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged.” Id.

III. CONRADO GONZALEZ’ EXCLUSIVE REMEDY FOR HIS INJURIES IS IN THE WORKERS’ COMPENSATION ACT, C.G.S. § 31-284

Connecticut General Statute § 31-284 provides in pertinent part that “[a]ll rights and claims between an employer who complies with the requirements of subsection

(b) of this section and employees, or any representatives or dependents of such employees, arising out of personal injury or death sustained in the course of employment are abolished other than rights and claims given by this chapter ...” The Workers’ Compensation Act allows for employees to be compensated without regard to fault, and in exchange, the employees give up their right to pursue any common law tort action for injuries suffered. Johnson v. Atkinson, 283 Conn. 243, 251, 926 A.2d 656, 661 (2007), overruled by Jaiguay v. Vasquez, 287 Conn. 323, 948 A.2d 955 (2008). A reading of the Workers’ Compensation Act shows that “all rights and claims between employers and employees, or their representatives or dependents, arising out of personal injury or death sustained in the course of employment are abolished as a result of the act's exclusivity bar.” Id.

Conrado Gonzalez was an employee of the SWPCA, was at work, performing a task requested of him by his employer, when the explosion occurred and he suffered his subsequent injuries. (See Complaint Paragraph 5). This clearly places Gonzalez as an employee, performing a task within his employment, when he was injured, and therefore the exclusivity provision of the Workers Compensation Act shall apply. However, an exception to the exclusivity provision applies, but Gonzalez failed to satisfy the pleading requirements for the exception to apply.

A. GONZALEZ FAILED TO ESTABLISH THE EXCEPTION TO THE EXCLUSIVITY PROVISION OF THE WORKERS’ COMPENSATION ACT

“In order to defeat the exclusive remedy provision of the Workers' Compensation Act the plaintiff must allege facts to establish either that the employer actually intended to injure the plaintiff, the actual intent standard, or that the employer intentionally created a dangerous condition that made the plaintiff's injuries substantially certain to occur, the substantial certainty standard.” Lucenti v. Laviero, 165 Conn. App. 429, 435-36 (2016), aff'd, 327 Conn. 764, 176 A.3d 1 (2018). The actual intent standard requires that “both the act producing the injury and the specific injury to the employee must be intentional.” Id. at 436. The substantial certainty standard “requires that the plaintiff establish that the employer intentionally acted in such a way that the resulting injury to the employee was substantially certain to result from the employer's conduct.” Id. at 437. “To satisfy the substantial certainty standard, a plaintiff must show more than that a defendant exhibited a lackadaisical or even cavalier attitude toward worker safety. Rather, a plaintiff must demonstrate that his employer *believed* that its conduct was substantially certain to cause the employee harm.” Id. (Emphasis in original.)

Gonzalez failed to plead and establish that the exception to the exclusivity provision of the Workers' Compensation Act should apply to his case. The exception fails under the actual intent standard because Gonzalez will not be able to establish that his employer intended for the explosion to occur when sending Gonzalez to check on the status of the fan repair, and also did not intend for Gonzalez to suffer the various cerebral, soft-tissue, shoulder, and nasal injuries that he ended up suffering as

a result of the explosion.

This exception also fails under the substantial certainty standard because Gonzalez failed to establish that his employer sending him to check on the status of the fan repair was an intentional act by the employer that was substantially certain to result in injuries to Gonzalez. Gonzalez will not be able to prove that his employer knew that by sending Gonzalez to check on the status of the fan repair would result, with substantial certainty, in Gonzalez suffering the various cerebral, soft-tissue, shoulder, and nasal injuries that he ended up suffering as a result of the explosion.

Accordingly, the Court should grant the City of Stamford's Motion to Strike because the relief for Conrado Gonzalez' claim lies exclusive within the Workers' Compensation Act of Connecticut General Statute § 31-284.

WHEREFORE, the Defendant City of Stamford requests that the Court grant its Motion to Strike Count Eight of the Plaintiffs' Complaint, and enter judgment in its favor.

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